Kluwer Arbitration Blog

2025 PAW: Forging a European Culture of ADR in Industrial Property

Rouba Moukawem · Thursday, April 24th, 2025

The conference on "Arbitration and Mediation in Industrial Property," during Paris Arbitration Week ("PAW") 2025, brought together legal scholars, judges, arbitrators, and mediators to explore how alternative dispute resolution ("ADR") is reshaping the landscape of industrial property. The first panel focused on this transformation, while the second delved into the launch of the Patent Mediation and Arbitration Centre ("PMAC") under the framework of the Unified Patent Court ("UPC") .

Panel 1: Ensuring Certainty Amidst Progress: The Role of ADR in a Fast-Changing Landscape

The event began with a roundtable moderated by Guillaume de La Bigne (**LLR Consulting Firm)**, setting the tone for a candid, cross-disciplinary exchange. Judge Malik Chapuis (Paris Judicial Court) opened with insights from the Paris Judicial Court's 3rd chamber, emphasizing the judiciary's increasing openness to mediation—even in traditionally rigid litigation arenas. Jacques de Werra (University of Geneva), offered a comparative perspective, highlighting arbitration's advantages in cross-border disputes, particularly those involving patents and licensing.

ADR plays a crucial role in maintaining certainty, even as the broader legal and economic frameworks continue to shift. One particularly technical point Jacques de Werra raised was the evolving treatment of Standard Essential Patents (SEPs) under the Fair, Reasonable, and Non-Discriminatory ("FRAND") licensing framework. He discussed how arbitration offers a more controlled and expert-driven forum for resolving FRAND disputes, which often involve complex valuation and compliance issues. Courts across Europe differ on the arbitrability of such claims, but arbitration has gained traction as an efficient alternative—especially given the need for enforceable outcomes across multiple jurisdictions.

The conversation also explored arbitrability of intellectual property ("IP") more broadly. In many European jurisdictions, while issues of IP validity are typically reserved for national courts, contractual disputes—such as royalty disagreements, licensing breaches, and non-compete clauses—are increasingly considered arbitrable. Several speakers, including Isabelle Romet (Interspheris), highlighted how this evolving legal landscape enables parties to opt for dispute resolution mechanisms better suited to the technical and commercial realities of their work. This

shift toward arbitrability in contractual IP matters not only enhances procedural flexibility but also explains why **ADR, and arbitration in particular, is receiving growing attention**. As parties seek efficient, specialized, and confidential forums to resolve complex disputes, the adaptability of arbitration makes it an increasingly attractive alternative to litigation.

Isabelle Romet and Martine Karsenty-Ricard (JPKarsenty) added a deeply human dimension to the conversation. Drawing from her experience as a mediator at Interspheris, Romet underscored the transformational potential of structured dialogue, even in high-stakes patent disputes. Mediation, she argued, can prevent reputational damage, preserve licensing relationships, and bring creative business solutions into a space that litigation too often polarizes. Karsenty-Ricard expanded on this by highlighting the strategic function of mediation within broader litigation timelines—particularly under new judicial models that encourage settlement before reaching trial. These solutions seemed to be modern, and both cost and time-efficient.

The panellists also stressed the role of confidentiality in arbitration and mediation. In industries such as pharmaceuticals, chemicals, and emerging technologies, where protecting trade secrets and proprietary methods is essential, confidentiality can be a decisive factor in choosing ADR over traditional litigation. Court proceedings, which are typically public, risk the inadvertent disclosure of sensitive commercial information through open hearings, published filings, or public judgments. In contrast, ADR offers a **tailored procedural framework**—one that includes features such as **closed hearings, restricted access to evidence and records, and non-public final decisions or awards**. Parties may also agree on additional confidentiality measures, such as non-disclosure obligations for arbitrators and participants. This procedural flexibility allows ADR to adapt to the confidentiality needs of the parties while upholding principles of due process, such as equality of arms and the right to be heard.

Panel 2: PMAC Potentials: Regional Accessibility and Expertise for European Patent Disputes

The second panel, led by Marianne Gabriel (Casalonga), delved into the architecture and ambitions of the PMAC, a newly introduced ADR body under the UPC. Aleš Zalar (PMAC) spoke about PMAC's mission to become a hub for sophisticated patent dispute resolution across Europe. He presented PMAC not merely as an institutional appendage of the UPC, but as a strategic innovation space for dispute resolution. The idea, he noted, is to create a Europe-wide ADR culture, with shared procedural expectations and a pool of trained professionals.

PMAC's Adaptability: Becoming the Go-To Forum for Complex Patent Disputes

Emmanuel Gougé (UPC Court of Appeal) provided a detailed explanation of the jurisdictional mandate and procedural rules governing PMAC. Article 35(2) of the UPC Agreement establishes PMAC's authority to handle disputes related to European patents. Rule 5(1) elaborates that courts may suspend proceedings to encourage ADR efforts, and that PMAC's decisions—if resulting in a settlement—can be rendered enforceable under the same regime as court judgments.

This legal architecture provides substantial benefits. For one, it reduces litigation bottlenecks at the UPC. More importantly, it offers parties a procedural shortcut without sacrificing legitimacy. PMAC panels will consist of experienced arbitrators and mediators from the industrial property domain—meaning parties will not have to "educate the court" about the science or economics

underlying their claims.

De Werra returned in this session to highlight the comparative landscape of ADR institutions. He contrasted PMAC with existing forums like the WIPO Arbitration and Mediation Center, the ICC International Court of Arbitration, and even specialized regional centers like the German Arbitration Institute (DIS). Each offers its own procedural rules, confidentiality guarantees, and panels. However, the establishment of PMAC could encourage European parties—especially small and medium enterprises (SMEs)—to consider ADR more seriously, thanks to its regional accessibility and integration with the UPC system.

The panel further helped reflect on the growing intersection of law and innovation. Industrial property disputes are no longer limited to traditional patent infringement or invalidation. They now span licensing ecosystems, collaborative R&D frameworks, open innovation models, and increasingly, data ownership and algorithmic patents. ADR mechanisms must evolve in tandem—not only to manage volume but also to uphold expertise.

Judicial Maturity and ADR: Forging a Flexible Culture of Innovation in Industrial Property

The speakers did not shy away from the challenges ahead. Several concerns were candidly discussed. First, PMAC is still in its infancy, with only a handful of completed cases to date. Second, the lack of harmonized ADR training across Europe risks limiting the pool of qualified and specialised neutrals. Third, a cultural bias towards litigation persists, particularly within legal departments that may not yet fully embrace the potential of mediation.

To bridge these gaps, the speakers proposed a multifaceted approach. They called for the development of ADR clauses specifically tailored to IP contracts, which would embed alternative mechanisms directly into the commercial fabric of innovation. Additionally, they advocated for the creation of specialised training programmes aimed at mediators and arbitrators with scientific or technical backgrounds—ensuring that neutrals are equipped not only with legal acumen but also with sector-specific insight. Finally, they stressed the importance of promoting comparative legal research, which could foster greater consistency in jurisprudence and help harmonize ADR practices across jurisdictions.

In one of the most energizing moments of the session, Malik Chapuis called for a future where judges and mediators collaborate, not compete. He envisioned judicial models where referral to ADR is not a sign of procedural weakness, but of judicial maturity. Such an idea was a demonstration that the arbitration community is actively shaping a new legal ecosystem, one where innovation in dispute resolution mirrors the very innovation it seeks to protect.

Conclusion

The event was a reflection of what conflict can do, whether in families forced into displacement or in institutions entangled in unresolved tension. Even in highly technical fields like industrial property, resolution is not just about law, but also about structure, empathy, dialogue, and foresight.

The judiciary’s evolving openness to ADR is a shift that not only reflects institutional reform but signals a broader cultural turn toward conciliation, even in systems historically rooted in

adversarial logic. Mediation is also transformative, not only in its capacity to de-escalate, but also in its ability to preserve relationships and protect reputations along with business-minded creativity. Confidentiality was another recurring thread, especially critical in industries where IP is not just an asset, but the core of corporate identity and value.

Moreover, ADR, whether through arbitration or mediation, is no longer peripheral. It is central to how we manage legal risk, commercial complexity, and institutional trust in a fast-moving Europe. ADR plays a crucial role in maintaining certainty amidst change by offering adaptable frameworks that uphold fairness and technical precision.

This event was more than an academic dialogue; it was a call to rethink how we approach legal conflict in a rapidly transforming Europe. With the PMAC as a promising vehicle and a growing community of practice around it, the seeds of transformation have already been sown. Now comes the challenge, and the opportunity, of turning those seeds into structure, culture, and trust.

*This post is part of Kluwer Arbitration Blog's coverage of **Paris Arbitration Week 2025**.*

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